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Applicant(s)	Cossins, Robert N., et al.	Examiner	E. Ramos-Feliciano
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For	Geographic Management System		

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APPEAL BRIEF

In accord with 37 C.F.R. § 41.37, and fully responsive to the Office Action of May 5, 2005, Appellants hereby file their appeal brief in support of their Appeal in the above-identified matter. A notice of appeal, with appropriate fee of $250 as required by §§41.31, 41.20(b)(1), was filed on September 6, 2005. The $250 fee for this appeal brief, as required by 37 C.F.R. §41.20(b)(2), is also filed herewith. This appeal brief is timely filed within two months of the mailing of the notice of appeal.

I. *Real party in interest*

The real party in interest for this appeal is CeleritasWorks, LLC. Evidence of this assignment, which was recorded on February 27, 2004, may be found at reel/frame 014402/0743.

II. *Related appeals and interferences*

No other appeals or interferences are known to appellants, the appellants' legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. *Status of claims*

Claims 1–49 are pending in the present Application. Claims 33–48 have been withdrawn from consideration by the Examiner. All non-withdrawn claims 1–32 and 49 are appealed herein.

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Claims 1 and 49 stand rejected under the doctrine of obviousness-type double patenting in view of claims 11 and 99, respectively, of U.S. Patent No. 6,343,290. Claims 1–32 and 49 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No.5,285,494 to Sprecher et al.

IV. *Status of amendments*

The presently-appealed application is a Continuation-in-Part of U.S. Patent Application No. 470553, filed on December 22, 1999, which issued as U.S. patent No. 6,343,290. A Request for Continued Examination (RCE), adding claims to the present application, was filed on May 3, 2004. No amendments to the present application have been filed subsequent to the most recent Office Action of May 5, 2005.

V. *Summary of Claimed Subject Matter*

The present system provides mechanisms for managing networks using network data and geospatial data to provide a geographical representation of a network through a graphical interface for a user. The system is used to view, monitor, and manage networks [Paragraph 54].

Geospatial data includes geographic data and/or spatial data. Geographic data includes location data comprising data identifying latitude, longitude, addresses, city, state, county, and/or other location data. Spatial data comprises data representing *geographic elements*, including streets or highways, streams, lakes, structures, and/or other geographic identification data, including data in the form of image data and/or text data [Paragraph 55].

Network elements [e.g., **Fig. 1**, **108** and **110**] having network characteristics are generated for display in relation to the geographic elements. Performance elements [e.g., **Fig. 5A**, **514 – 522**] having performance characteristics, are generated for display proximal to a corresponding network element [Paragraph 03].

Examples of *performance elements* having performance characteristics are display elements having colors or patterns that signify configured parameters, performance attributes, or network events or other display elements, such as text or symbols, that identify configured parameters, performance attributes, or network events [Paragraph 108]. Performance elements display performance characteristics that

signify a performance level of one or more performance attributes. For example, performance element **520** [Fig. 5A] has a performance characteristic in the form of a left-to-right striped pattern to signify, for example, that the performance level is healthy and does not rise to a critical level [Paragraph 117]. The status of a network is thus one type of performance attribute.

The present system can be used to display network elements, with or without performance elements, relative to each other, relative to customers, and relative to geographic elements. [Paragraph 56].

If more than one performance element is to be used for a single network element or is to be used for associated components, equipment, or network elements at a particular geographic location, such as described above, the performance elements are referred to as *'sectored' performance elements* [Paragraph 144]. Likewise, *sectored* performance characteristics and *sectored* performance attributes are the performance characteristics and performance attributes, as defined above, which correspond to *sectored* performance elements.

Multiple performance elements, including sectored performance elements, may be generated and displayed for a single network element. Each performance element may have a different performance characteristic signifying one or more performance levels for one or more attributes [Paragraph 142]. For example, sector **568** in **Fig. 5C** includes sectored performance elements **588**, **590, 592**, and **594**.

The performance elements and the performance characteristics for those performance elements may be configured as needed to depict the performance attributes of a network. These performance elements and performance characteristics include sectored performance elements with sectored performance characteristics, with each possibly having non-uniform shapes or other characteristics [Paragraph 149].

VI. *Grounds of Rejection to Be Reviewed on Appeal*

1. Claims 1 and 49 stand rejected under the doctrine of obviousness-type double patenting in view of claims 11 and 99, respectively, of U.S. Patent No. 6,343,290.

2. Claims 1–32 and 49 stand rejected as being anticipated under 35 U.S.C. 102(b) by U.S. Patent No. 5,285,494.

VII. *Argument*

A. *Claims 1 and 49 are patentably distinguishable over claims 11 and 99, respectively, of U.S. Patent No. 6,343,290.*

Claims 1 and 49 stand rejected under the doctrine of obviousness-type double patenting in view of claims 11 and 99, respectively, of U.S. Patent No. 6,343,290 (the "'290 patent"). The present application is a continuation-in-part of the '290 patent. Both the present application and the '290 Patent are commonly owned.

Claim 1 was rejected as being obvious in view of claim 11 in the '290 patent, the Examiner stating that "a 'sectored performance element' is considered to be a subset of the inclusive set represented by 'performance element'." Claim 49 was rejected (with respect to claim 99 of the '290 Patent) for essentially the same reasons as claim 1.

Appellants maintain that "*sectored* performance elements" are entities that are not obvious in view of "performance elements", and are not an obvious subset or derivation of "performance elements". Even if, for the sake of argument, "sectored performance elements" *were* considered to be a subset of "performance elements", these "sectored performance elements" are not rendered obvious by the mere existence of a set of "performance elements". By way of analogy, Appellants will equate the term 'set' with 'genus', and equate the term 'subset' with 'species', since the M.P.E.P. addresses these specific terms / relationships, and because the Examiner has not indicated what rule or (case) law has been relied on for the rejections made on the basis of the relationship between the terms "set" and "subset", as used in the language rejecting Appellants' claims.

According to M.P.E.P. sec. 2144, subsection II, "[t]he section 103 requirement of unobviousness is no different in chemical cases than with respect to other categories of patentable inventions", and further states

> "[t]he fact that a claimed species or subgenus is encompassed by the prior art is not sufficient by itself to establish a *prima facie* case of obviousness".

Furthermore, M.P.E.P. sec. 2144, subsection II.4(a) states that [s]ome motivation to select the claimed species or subgenus must be taught by the prior art." *Therefore, absent specific motivation to select the 'subset' from the 'inclusive set', a given 'genus' does not render the related 'species' obvious.*

Claims 1 and 49 of the present application are patentably distinct from those in the '290 patent. The system of the present application, as claimed, employs sectored performance elements. In a cell network, for example, this system enables a user to see performance data, at a glance, for each individual sector in a cell area. In the cell systems of the '290 patent, this was not possible, as either the cell data for the entire cell area as a whole was depicted, or only one sector for the cell area could be depicted. Using the present system, customer support personnel, engineers, and others are able to see individual sectors of the cell area and are better able to determine what issues exist for the associated network.

Therefore, the systems of the '290 patent and the present application are significantly different. The presently-claimed invention represents an advance over the invention disclosed and claimed in the '290 patent. The present application and the '290 patent teach patentably distinct structures. The differences between the systems of the '290 patent and the present application would not have been obvious to one of ordinary skill in the art at the time the present invention was made. The Examiner has given no reasoned statement why this advance must be obvious to one skilled in the art.

In order for the 'double patenting' rejection to stand, the Examiner must show some evidence that the presently claimed limitation of "sectored performance elements" is obvious in view of the '290 patent. The Examiner must provide a detailed explanation of how the prior art renders a claim obvious, including "reasoned findings" identifying structures [see *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002)]. The Examiner must provide objective evidence and proper authority for the rejection. *In re Lee* at 1435. The Examiner may not base a rejection on conclusory statements. An analysis, including evidence relevant to the finding of obviousness, must be undertaken. *In re Lee* at 1433. The Examiner can satisfy the burden only be showing some objective evidence. *In re Lee* at 1434. Conclusory statements from the Examiner cannot be used in place of actual evidence. *In re Lee* at 1434. This factual inquiry is material to

patentability, and can not be resolved on subjective belief and unknown authority. *In re Lee* at 1434.

Given the absence of "reasoned findings", *inter alia*, required as a basis for the rejections of claims 1 and 49, and in view of at least the reasons set forth above, Appellants assert that these claims are patentable over all claims, including claims 11 and 99, in the '290 patent.

B. *Claims 1–32 and 49 are not anticipated by Patent No.5,285,494 to Sprecher et al., since the '494 patent does not disclose every element of any one of these pending claims.*

1. Claims 1–16, and 19–30

Claims 1–32 and 49 stand rejected as being anticipated under 35 U.S.C. 102(b) by U.S. Patent No. 5,285,494, to *Sprecher et al.* ("Sprecher"). Appellants maintain that rejected claims 1–16, and 19–30 are not anticipated, under 35 U.S.C. 102(b), by Patent No. 5,285,494, because Sprecher does not disclose every one of the elements and limitations recited in these claims.

1.1. Summary

Appellants' position on the present issue may be summarized as follows:

(a) Sprecher discloses a system that displays data for a network. Sprecher's system includes:

(1) a main display window with a "tripartite screen", including:
- a textual error log window 160 (FIG. 4A),
- an overview graphical monitor window 156 (FIG. 4B), and
- a detailed graphical monitor window 158 (FIG. 4C).

(2) other user-invoked windows, including:
- a "cell INFO window" (FIG. 8) and
- a "sector INFO window" (*not shown*)

(b) Sprecher does not disclose each element of any of Appellants' claims.

(1) Each of Appellants' independent claims includes the following limitations:

– at least one *network element*; and

– at least one *sectored performance element*, corresponding to a network element, having a *sectored performance characteristic*.

(2) Each of Appellants' claimed "sectored performance elements" includes at least one "sectored performance characteristic" signifying a *performance level* of one or more performance attributes. *Appellants' claimed system allows multiple performance elements, including sectored performance elements, to be generated and displayed for a single network element.* None of the display windows taught by Sprecher include a sectored *performance element*, since, among other deficiencies, the windows do not allow an indication of *a plurality of performance levels* for a given network element. Therefore, none of Sprecher's display windows can be construed to include the same or similar entity as Appellants' claimed "sectored performance element".

(3) The "color codes" in the legend in Figure 4B of Sprecher do not correspond to Appellants' claimed "sectored performance element(s)".

(4) Sprecher's "sector INFO window" (not shown) does not include any *performance* characteristics, but rather *physical* characteristics, and thus does not signify a *performance level* of any network element. Therefore, this "sector INFO window" does not include either of Appellants' claimed "sectored performance elements" or "sectored performance characteristics".

For at least the above reasons, Sprecher cannot anticipate Appellants' claimed invention.

1.2. Examiner's stated basis for rejections of Appellants' claims

In the most recent Office Action of May 5, 2005, all pending claims, 1-32 and 49, were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,285,494, issued to Sprecher et al. (hereinafter "Sprecher").

In the May 5, 2005 Office Action, the Examiner stated:

"Regarding claim 1, Sprecher et al. discloses a system for managing a network; see the title. The system utilizes a processor (inherent) and is configured to generate display elements; see Figures **4 - 4C** and **column 3, line 50 to column 4, line 32**. As depicted in Figures **4B-4C**, the display elements include:

... network elements (cell sites/sectors **col. 5, line 59**) having network characteristics (e.g. cell site outages and traffic patterns) and generated for display in relation to the geographic elements;

sectored performance elements (see the color codes at the legend in **Figure 4B – column 4, lines 19-22**) having sectored performance characteristics (e.g. critical, major, minor, ..., normal, etc.) each generated for display proximal to a corresponding network element (see "LEGEND") in **Figure 4B, and column 4, lines 13-24**). According to the LEGEND Figure 4B exhibits a "Normal" condition view. Figure 4C, exhibits a sector view of that in Figure 4B. See also **column 5, lines 54-68**, **column 6, lines 1-5** & **66-68**, **column 7, lines 60-66**" [bold font added for ease of subsequent reference].

1.3. Summary of Appellants' independent claim limitations

Appellants' claims are directed to, and recite, display elements including network elements and sectored performance elements (each with further limitations). Each of Appellants' independent claims includes the limitations of at least one *network element* and at least one *sectored performance element*, corresponding to an associated network element, having a *sectored performance characteristic*. Thus at least one "sectored performance element" is an integral part (either explicitly or inherently) of every one of Appellants' claims.

Each of Appellants' "sectored performance elements" includes a "sectored performance characteristic" signifying a *performance level* of one or more performance attributes [*see, e.g.,* paragraph 117]. "If more than one performance element ... is to be used for associated components, equipment, or network elements at a particular geographic location, ... the performance elements are referred to as *sectored* performance elements" [paragraph 144, emphasis supplied]. None of the display windows taught by Sprecher include Appellants' claimed *sectored performance elements*, which allow *multiple* attributes of an associated network element can be displayed at a particular location, and thus none of Sprecher's windows can be construed to include the same or similar entities as Appellants' claimed "sectored performance elements" having "sectored performance characteristics".

1.4. No "sectored performance elements" are shown in Figures 4A– 4C of Sprecher

Figure 4B in the Sprecher patent depicts a legend having six square boxes and over 20 circles (none of which are indicated as 'network elements'). A label appears next to each box in the legend, indicating critical, major, minor, warning, info, or normal conditions. In close proximity to the legend are three more boxes labeled LA3, LA4, and LA5. No areas of the geographic map of Figure 4B are shaded. None of the circles in Figure 4B are shaded inside, outside, or nearby. There is no shading, color, or other identifying characteristic anywhere on Figure 4B other than the legend and the boxes labeled LA3, LA4, and LA5.

Neither Figures 4A–4C, nor the associated text, indicate what is meant by LA3, LA4, or LA5. Does, for example, box LA5 belong to High Desert, Ventura, or South County? What are High Desert, Ventura, or South County – cities, areas, cell towers, or other entities? Nothing in the Figures or the text corresponds to LA3, LA4, or LA5. Sprecher does not state that these three boxes represent any characteristic for any network element or even for any area. *The patterns in the three boxes do not match anything in the legend, or correspond to anything in the rest of the Figure*. Neither the three boxes LA3–LA5, nor the 'color-coded' legend in Figure 4B are displayed as performance elements, much less as *sectored* performance elements.

Appellants' performance elements display *performance characteristics* that signify a *performance level* of one or more performance attributes. Appellants' claimed "*sectored* performance elements" allow more than one performance element to be used to show the status, or other characteristics, of associated network elements. *Thus Appellants' claimed system allows multiple performance elements, including sectored performance elements, to be generated and displayed for a single network element.* For example, a network element may be depicted by a circle on a map. The circular network element may have multiple concentric rings identifying multiple performance elements. Each performance element may have a different performance characteristic signifying one or more performance levels for one or more attributes [paragraph 142].

Therefore, in view of the definitions provided in Appellants' specification, the legend on Figure 4B does not show a "sectored performance element", as recited in

each of Appellants' independent claims. The legend on Figure 4B does not show "sectored performance characteristics" for any "sectored performance elements", keeping in mind the requirement that a *sectored* performance element must be able to indicate *more than one performance element* for an associated component or network element at a particular geographic location. Neither Figures 4A nor 4C show these limitations, either. The legend disclosed in Sprecher cannot meet Appellants' claimed limitations, since, *inter alia*, the legend can show only one type of attribute, e.g., an alarm condition. Thus, Figure 4B of the Sprecher patent, alone, or combined with any text in the specification, does not read on all of the elements and limitations in Appellants' pending claims 1–16, and 19–30.

1.5. Sprecher's "color codes" do not correspond to Appellants' "sectored performance elements"

None of the boxes, either inside or outside the legend in Figure 4B, are associated with any network element, nor are they displayed near any network element, and it simply cannot be determined from a reading of the Sprecher patent whether they correspond to any particular element at all. Plainly, neither the Examiner nor anyone else can supply these missing teachings, based on any reasonable interpretation of the Sprecher patent. Appellants contend that the Examiner cannot reasonably assert that the color codes identified in the legend in Figure 4B are themselves "sectored performance elements". The color codes are in a *legend*. The color codes do not correspond to anything displayed on Figure 4B.

Furthermore, the Examiner's assertion that Sprecher's "color codes" correspond to Appellants' claimed "sectored performance element(s)" improperly ignores the description thereof in Appellants' specification. Although limitations from the specification are not read into the claims, a long line of Federal Circuit cases hold that claims are to be read in a manner consistent with the specification. Recently, in *Phillips v. AWH Corp.*, 03-1269 -1286 [page 24], (Fed. Cir. 2005), the Court stated "...the specification is 'the single best guide to the meaning of a disputed term,' and that the specification 'acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication.' *Vitronics*, 90 F.3d at 1582; *Irdeto Access, Inc. v.*

Echostar Satellite Corp., 383 F.3d 1295, 1300 (Fed. Cir. 2004)". It should be noted that "network element" [e.g., paragraph 62] and "performance element" [e.g., paragraphs 104, 105, 108, and 109] are discussed thoroughly in Appellants' specification and should be interpreted consistently with that disclosure. Similarly, "sectored performance element" [e.g., paragraphs 151 and 156] and "sectored performance characteristic" [e.g., paragraphs 240 – 241] are discussed in Appellants' specification. See also, for example, Figures 5A–5C, 40, 42, and 45A–45B, in the present application.

The terms "sectored performance element" and "sectored performance characteristic" cannot be found in a dictionary. The Examiner must therefore consult Appellants' specification to determine the meaning of these particular terms in the context of the invention as disclosed in the specification. Instead, the Examiner has implicitly supplied his own definition of the terms by simply stating that the elements represented by these terms are found in unrelated items disclosed in the Sprecher patent. Sprecher does not teach the above-referenced claim limitations in light of their meaning necessarily imparted by Appellants' specification.

Claim 1 requires *network elements having network characteristics and generated for display in relation to the geographic elements.* Sprecher does not disclose or teach this limitation. Sprecher does not teach or disclose network characteristics generated for network elements. Sprecher does not teach or disclose display elements comprising network elements. In addition, each of Appellants' independent claims recites at least one *sectored performance element having a sectored performance characteristic.* Sprecher does not disclose or teach *sectored* performance elements. Nor does Sprecher disclose or teach *sectored* performance characteristics generated for display proximal to, or otherwise associated with, a corresponding network element.

1.6. Sprecher's "tactical surveillance module" does not generate Appellants' "display elements"

The output from the tactical surveillance module provides all of the information displayed in Sprecher's Figures 4A–4C [see column 4, lines 13–15, in which is stated "... FIG. 4 ... depicts in the preferred embodiment form, a tripartite screen illustrating the output of the tactical surveillance module 126"].

The discussion in Sprecher from column 3, line 50 to column 4, line 32, and in relation to Figures 4B–4C, is for the same data and the same display. In column 3, at lines 52–56, Sprecher states "[t]he tactical surveillance module 126 of the NSS interface 125 enables the user to evaluate alarm data from network elements affected by a natural or manmade disaster such as, but not limited to, cell site outages and unusual shifts in traffic patterns." Thus, the interface taught by Sprecher merely allows *a user* to *evaluate* alarm data from network elements.

At column 4, lines 13-30, Sprecher states:

> "Reference is now made to FIG. 4 which depicts in the preferred embodiment form, a tripartite screen illustrating the output of the tactical surveillance module 126. An overview graphical monitor 156 is depicted in the bottom left-hand corner of the screen (FIG. 4B) while a detailed graphical monitor 158 (FIG. 4C) [titled "Network Zoom Window"] is depicted in the bottom right-hand corner of the screen. A legend 157, here depicted in the left-hand bottom of the screen (FIG. 4B), color codes the graphical monitors 156 and 158. The colors indicate the criticality of an alarm condition ranging from a normal condition to a critical alarm. A textual error log 160 (FIG. 4A) is depicted along the top of the screen. The textual error log 160 includes but is not limited to such information as the name of the alarm site, the description of the alarm, the time and the day of the occurrence of the alarm, the time and the day that the alarm was cleared, and the operator who resolved the alarm condition."

Neither the above citation, nor any other part of Sprecher, teaches the concept of display elements as described and claimed by Appellants. Sprecher states that the tactical surveillance module enables the user to evaluate alarm data from the network elements affected by a natural or man made disaster such as cell site outages. Enabling a user to evaluate the alarm data from a network element does not equate to generating a network characteristic for the network element. A spreadsheet document would enable a user to evaluate alarm data, but that is not the same as generating a network characteristic itself *for display*.

Sprecher discloses a specific way in which the alarm data can be evaluated. As pointed out by Sprecher, the *legend*, rather than anything displayed for a network element, indicates the criticality of an alarm. Thus Sprecher cannot possibly teach or disclose both of the limitations of Appellants' claim 1 for the "network elements" and the "sectored performance elements". At most, Sprecher would only be able to disclose

one of the limitations. Appellants contend that Sprecher does not even disclose one of them.

Furthermore, none of Figures 4A–4C show a network element with a network characteristic generated for display. Figure 4B shows empty circles. The empty circles are not color-filled or shaded and do not have any other characteristics. Figure 4C shows empty circles and empty diamonds. The empty circles and empty diamonds are not color-filled or shaded and do not have any other characteristics. Neither Sprecher's drawings nor specification state clearly what is represented by these circles and diamonds. The circles have city names, such as Los Angeles and Pasadena. The diamonds also have city names, such as Westwood Village and Beverly Hills. Other names designate Handcock Park, CBS, etc. It is not clear whether the circles and diamonds represent cell sites or cities, parks, or other entities or locations. Therefore, Appellants assert that none of the entities shown in Sprecher's Figures 4A–4C can be reasonably interpreted to be the same (or similar) entities as Appellants' claimed display elements.

Appellants' claim 1 requires *sectored performance elements having sectored performance characteristics, each generated for display proximal to a corresponding network element.* The sectored performance elements are in addition to the network elements. Sprecher does not disclose or teach *sectored* performance elements. Nor does Sprecher disclose or teach sectored performance characteristics generated for display proximal to, or otherwise associated with a corresponding network element.

Therefore, Appellants disagree with the Examiner's statement that Figure 4B in Sprecher shows sectored performance elements having sectored performance characteristics and generated for display in relation to the geographic elements and sectored performance elements having sectored performance characteristics, each generated for display proximal to a corresponding network element. Figure 4B does not show network elements having network characteristics. Figure 4B does not show sectored performance elements having sectored performance characteristics. Figure 4B does not show sectored performance elements generated for display proximal to, or otherwise corresponding to, an associated network element, as recited in each of Appellants' independent claims.

1.7. Discussion of additional sections of Sprecher cited by the Examiner

Included below, for completeness of the present argument, are additional sections in Sprecher referenced by the Examiner in rejecting Appellants' claims. At *column 5, line 55–column 6, line 5*, Sprecher discusses the system map module 132 of Figure 2:

> "The system map module 132 is a graphical user interface for providing a detailed United States Geographical Survey (USGS) terrain map of a specific cellular market area. The system map is color coded by elevation and depicts area freeways and cell/sectors located within the user's specified cellular phone market."

In the above citation, Sprecher discloses that the system map is color coded by elevation and can depict freeways and cell/sectors within a market. Sprecher does not teach a display element comprising a geographic element, a network element, or a sectored performance element. Sprecher is merely stating that a map of an area can be shown. Sprecher does not teach a display or even identify a figure with a display in the above cite. There is no teaching here of a display element for a geographic element, a network element, or a sectored performance element.

At *column 6, lines 60–64*, Sprecher states:

> "The get info on cell at step 196 displays statistics on a particular cell. At step 198, a cell INFO window supplies the mobile telephone switch office number, cell identification number, cell name, longitude and latitude of the cell, the number of sectors and their location within the cell, and a graphical display of the cell. By highlighting one of the sectors within a particular cell, a sector INFO window appears."

Column 6, lines 66-68 state "FIG. 8 is an exemplary but not exclusive depiction of a cell INFO window in accordance with the principals [*sic*] of the present invention."

The two citations immediately above discuss a "cell INFO window", but disclose nothing similar to the display elements recited in Appellants' claims, including "sectored performance elements" or "sectored performance characteristics".

Column 7, lines 1–4 of Sprecher state that "the sector INFO window" (*which is not shown in a drawing*) supplies the cell ID, the sector identification number, a spectrum list, arc of span in degrees, direction of the antenna in degrees, and the range of coverage. These characteristics displayed in Sprecher's sector INFO window are not

performance characteristics, but rather *physical* characteristics, and thus do not signify a *performance level* of any network element. Therefore, this "sector INFO window" does not include either of Appellants' claimed limitations of "sectored performance elements" or "sectored performance characteristics", as described in section VIII.B.3, above.

In addition, Sprecher indicates that *the* "sector INFO window" supplies various textual data. By definition, a single "sector INFO window", as disclosed in Sprecher, cannot be intelligibly displayed proximate to more than one 'display element' (assuming, *arguendo*, that any 'display elements' at all are shown in Sprecher), as required by Appellants' claim 1 limitation of "sectored performance elements having sectored performance characteristics, each generated for display proximal to a corresponding network element", which recites a *plurality* of sectored performance elements, each one of which is in proximity to a related network element.

At column 5, line 61 – column 6, line 2, Sprecher states:

> "Reference is now made to FIG. 6 which describes in detailed flow diagram form, the system map module 132 of FIG. 2. At step 170, a system map is displayed. At step 172, the user selects "clicks" [*sic*] anywhere on the system map to cause a menu to appear at step 174. Through the system map main menu, the user has access to the database 108 for generating network performance, maintenance, or customer service reports for the whole market or for a specific list of cell/sectors selected directly from the map. The user can utilize historical data for forecasting unusual traffic patterns providing the means for revising the dynamics of network routings."

In column 7, lines 60-66, Sprecher states:

> "The network equipment utilization option at step 218 generates reports based on network equipment utilization parameters. At step 220, additional user input prior to processing is applied including the previous number of days to be sourced for data to generate the report. At step 222, network utilization in accordance with the user selected criteria is displayed."

The above sections of Sprecher discusses various *reports*. The citations state nothing related to the *display* elements recited in each of Appellants' independent claims.

2. Claims 17, 18, 31, and 32

Claims 17, 18, 31, and 32 recite the limitation of "a setting selector configured to enable configuration of at least one performance level for each sectored performance attribute and to associate a specific sectored performance characteristic to a specific performance level". This additional limitation, relative to Appellants' independent claims, further distinguishes Appellants' claimed system over Sprecher. In presenting the rejection of claim 17, the Examiner equates Appellants' claimed "setting selector" with Sprecher's "system configuration module 139". However, at column 5, lines 6–9, Sprecher states "[t]he system configuration module 139 permits the user to configure the reporting ***format*** for all standard reports generated under the NMS Reports option 133 described hereinafter in more detail" [emphasis supplied]. Appellants' claimed "setting selector" does not function to "configure [a] reporting format", rather, *inter alia*, it enables a specific sectored performance characteristic to be associated with a specific performance level. Appellants' "setting selector" is not the same element as Sprecher's configuration module 139. For this additional reason, Appellants maintain that claims 17, 18, 31, and 32 are not anticipated by Sprecher.

3. Claim 49

With respect to claim 49, the Examiner stated:

> "Regarding claim 49, Sprecher et al. discloses a system for managing a network ... including: ... generating for display for the graphical interface (156) at least one sectored performance element (see the color codes at the legend 157 in Figure 4B – column 4, lines 19-22) having a sectored performance characteristic ...;
> wherein the at least one sectored performance element (e.g. color code NORMAL) corresponds to the at least one network element (e.g. cell site WEST LA)."

Appellants maintain, for reasons including those provided above with respect to independent claims 1, 5, and 19, that claim 49 is not anticipated by Sprecher. Among other reasons discussed above, Appellants' claimed "sectored performance element" is not similar to Sprecher's "color codes" in a legend. Furthermore, claim 49 does *not* recite the "geographic elements" limitation recited in claims independent claims 1, 5, and 19, and is therefore broader in scope than each of those claims, and is thus separately patentable with respect thereto.

VIII. Claims Appendix.

Appellants enclose a copy of the claims involved in this appeal as an appendix hereto.

IX. Evidence Appendix.

No evidence is entered or relied upon in this appeal.

X. Related Proceedings Appendix.

To Appellants' knowledge, there are no decisions rendered by a court or the Board for submission with this appeal.

XI. Conclusion

In view of the above arguments, Appellants submit that none of the presently pending claims in the present application are anticipated by Sprecher, for at least the reasons set forth above.

Other than the costs for the appeal brief, we believe no additional fees are due in connection with this matter. However, if any additional fee is deemed necessary in connection with this brief, the Commissioner is hereby authorized to charge such fee to Deposit Account No. 12-0600.

Respectfully submitted,

LATHROP & GAGE LC

By: E. Michael Byorick

E. Michael Byorick, Reg. No. 38,356
LATHROP & GAGE L.C.
4845 Pearl East Circle, Suite 300
Boulder, Colorado 80301
Telephone: (720) 931-3000
Facsimile: (720) 931-3001

CLAIMS APPENDIX

The claims involved in the present appeal :

1. A system for managing a network using a processor, the system configured to generate display elements comprising:

geographic elements having geographic characteristics;

network elements having network characteristics and generated for display in relation to the geographic elements; and

sectored performance elements having sectored performance characteristics, each generated for display proximal to a corresponding network element.

2. The system of claim 1 further comprising a plurality of sectored performance elements for each network element, each sectored performance element having a corresponding performance characteristic.

3. The system of claim 1 wherein the network comprises at least one member of a group consisting of a first area for which first data may be depicted geographically and a second area for which second data may be depicted with respect to performance attributes for the sectored performance elements.

4. The system of claim 1 wherein the network comprises at least one member of a group consisting of a communication network, an oil network, a gas network, a store network, a packaging network, and another business network.

5. A system for managing a network using a processor, the system configured to generate display elements comprising:

geographic elements each having at least one geographic characteristic;

network elements each having at least one network characteristic; and

sectored performance elements each having at least one sectored performance characteristic, each sectored performance characteristic corresponding to a sectored performance attribute and each sectored performance element generated for display for at least one network element.

6. The system of claim 5 wherein a plurality of sectored performance elements are generated for display for each network element.

7. The system of claim 5 wherein the network comprises at least one member of a group consisting of a communication network, an oil network, a gas network, a store network, a packaging network, and another business network.

8. The system of claim 5 wherein at least one network element is representative of at least one member of a group consisting of a communication network element, an oil network element, a gas network element, a store network element, a packaging network element, and another business network element.

9. The system of claim 5 wherein at least one sectored performance characteristic for at least one sectored performance element comprises at least one member of a group consisting of a color, a shade, a cross-hatch, a fill, and a shape.

10. The system of claim 9 wherein at least one other sectored performance characteristic for the at least one sectored performance element comprises at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape.

11. The system of claim 9 wherein at least one other sectored performance characteristic for at least one other sectored performance element comprises at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape.

12. The system of claim 5 wherein at least one sectored performance element comprises at least a portion of at least one member of a group consisting of a concentric ring, a pie-shape, a circle, and a polygon.

13. The system of claim 5 wherein a plurality of the sectored performance elements comprise at least a portion of at least one member of a group consisting of a plurality of stacked polygons and a plurality of concentric rings.

14. The system of claim 5 wherein at least one sectored performance element comprises a shape, wherein the shape is configured to vary depending on a value of a corresponding sectored performance attribute.

15. The system of claim 5 wherein at least one sectored performance element has a position, and the position is configured to vary depending on a value of a corresponding sectored performance attribute.

16. The system of claim 5 wherein at least one sectored performance characteristic of at least one sectored performance element is configured to vary depending on a value of a corresponding sectored performance attribute.

17. The system of claim 5 further comprising a setting selector configured to enable configuration of at least one performance level for each sectored performance attribute and to associate a specific sectored performance characteristic to a specific performance level.

18. The system of claim 17 wherein the specific sectored performance characteristic is generated based on a data attribute for the specific performance level.

19. A method for managing a network using a processor, the method comprising generating display elements for display, the display elements comprising:

geographic elements each having at least one geographic characteristic;

network elements each having at least one network characteristic; and

sectored performance elements each having at least one sectored performance characteristic, each sectored performance characteristic corresponding to a sectored performance attribute and each sectored performance element generated for display for at least one network element.

20. The method of claim 19 further comprising generating for display a plurality of sectored performance elements for each network element.

21. The method of claim 19 further comprising generating the display elements for display wherein the network comprises at least one member of a group

consisting of a communication network, an oil network, a gas network, a store network, a packaging network, and another business network.

22. The method of claim 19 further comprising generating for display at least one network element representative of at least one member of a group consisting of a communication network element, an oil network element, a gas network element, a store network element, a packaging network element, and another business network element.

23. The method of claim 19 further comprising generating at least one sectored performance characteristic for at least one sectored performance element comprising at least one member of a group consisting of a color, a shade, a cross-hatch, a fill, and a shape.

24. The method of claim 23 further comprising generating at least one other sectored performance characteristic for the at least one sectored performance element comprising at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape.

25. The method of claim 23 further comprising generating at least one other sectored performance characteristic for at least one other sectored performance element comprising at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape.

26. The method of claim 19 further comprising generating at least one sectored performance element comprising at least a portion of at least one member of a group consisting of a concentric ring, a pie-shape, a circle, and a polygon.

27. The method of claim 19 further comprising generating a plurality of the sectored performance elements comprising at least a portion of at least one member of a group consisting of a plurality of stacked polygons and a plurality of concentric rings.

28. The method of claim 19 further comprising generating at least one sectored performance characteristic of at least one sectored performance element that varies depending on a value of a corresponding sectored performance attribute.

29. The method of claim 19 further comprising generating at least one sectored performance element comprising a shape, wherein the shape is configured to vary depending on a value of a corresponding sectored performance attribute.

30. The method of claim 19 further comprising generating at least one sectored performance element having a position, wherein the position is configured to vary depending on a value of a corresponding sectored performance attribute.

31. The method of claim 19 further comprising enabling a setting selector configured to enable configuration of at least one performance level for each sectored performance attribute and to associate a specific sectored performance characteristic to a specific performance level.

32. The method of claim 31 further comprising generating the specific sectored performance characteristic based on a data attribute for the specific performance level.

49. A method for managing a network using a processor comprising:

materializing a graphical interface;

generating for display for the graphical interface at least one network element; and

generating for display for the graphical interface at least one sectored performance element having a sectored performance characteristic;

wherein the at least one sectored performance element corresponds to the at least one network element.

EVIDENCE APPENDIX

Not applicable to this appeal.

RELATED PROCEEDINGS APPENDIX

Not applicable to this appeal.

PTO/SB/21 (09-04)
Approved for use through 07/31/2006. OMB 0651-0031
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TRANSMITTAL FORM

(To be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/004,346
Filing Date	November 1, 2001
First Named Inventor	Robert N. Cossins
Art Unit	2681
Examiner Name	Eliseo Ramos Feliciano
Attorney Docket Number	396451

ENCLOSURES *(check all that apply)*

- ☒ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment / Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR1.52 or 1.53
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s) ____
  - ☐ Landscape Table on CD
- ☐ After Allowance Communication to TC
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☒ Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- ☐ Proprietary Information
- ☐ Status Letter
- ☒ Other Enclosure(s) *(please identify below):*

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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm	LATHROP & GAGE LC		
Signature	E. Michael Byrick		
Printed Name	E. Michael Byorick		
Date	November 2, 2005	Reg. No.	34,131

CERTIFICATE OF MAILING 37 CFR 1.10

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail Post Office to Addressee (Label No. EV413219382US) in an envelope addressed to: Mail Stop: Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature	Melissa Smith		
Typed or printed name	Melissa Smith	Date	November 2, 2005

PTO/SB/17 (12-04v2)
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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL for FY 2005

NOV 02 2005 U.S. PATENT & TRADEMARK OFFICE

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 250.00

Complete If Known	
Application Number	10/004,346
Filing Date	November 1, 2001
First Named Inventor	Robert N. Cossins
Examiner Name	Eliseo Ramos Feliciano
Art Unit	2681
Attorney Docket No.	396451

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : _____

☒ Deposit Account Deposit Account Number: 12-0600 Deposit Account Name: LATHROP & GAGE LC

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) Under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
		Small Entity		Small Entity		Small Entity	
Application Type	Fee ($)	Fee($)	Fee($)	Fee($)	Fee($)	Fee($)	Fees Paid ($)
Utility	300	150	500	250	200	100	____
Design	200	100	100	50	130	65	____
Plant	200	100	300	150	160	80	____
Reissue	300	150	500	250	600	300	____
Provisional	200	100	0	0	0	0	____

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims		Extra Claims	Fee($)		Fee Paid ($)
____	-20 or HP=	____	x ____	=	____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims		Extra Claims	Fee($)		Fee Paid ($)
____	- 3 or HP=	____	x ____	=	____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims	
Fee ($)	Fee Paid ($)
____	____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(a)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
____	- 100 =	____	/ 50 =	____ (round up to a whole number) x		= ____

4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	____
Other (e.g., late filing surcharge): Appeal Brief	250

SUBMITTED BY

Signature	E. Michael Byorick	Registration No. (Attorney/Agent) 34,131	Telephone (720) 931-3000
Name (Print/Type)	E. Michael Byorick	Date	November 2, 2005

CERTIFICATE OF MAILING BY EXPRESS MAIL POST OFFICE TO ADDRESSEE (37 CFR 1.10)			Matter No.
Applicant(s): Robert N. Cossins, et al.			396451
Serial No.	Filing Date	Examiner	Group Art Unit
10/004,346	November 1, 2001	Eliseo Ramos Feliciano	2681

Invention Geographic Management System

I hereby certify that the following: Transmittal Form (1 page); Fee Transmittal For FY 2005 (1 page in duplicate); Appeal Brief (24 pages); authorization to charge $250 for the appeal brief; authorization to charge additional fees that may be required, or credit any overpayment, to Deposit Account No. 12-0600; and return post card are being mailed in an envelope addressed to: Mail Stop: Appeal Brief -- Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 2nd day of November, 2005.

Melissa Smith
Name of Depositor

Melissa Smith
Signature of Depositor

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